

IN THE DRAWINGS:

In a Submission of Replacement Drawings filed concurrently herewith, Applicants concurrently file a Submission of Formal Drawings with five (5) sheets of formal drawings to substitute the original filed drawing sheets. The new formal drawings amend Fig. 1 to include the legend "Prior Art."

REMARKS

Summary of the Office Action

Fig. 1 stands objected to under 37 C.F.R. § 1.121(d) as not being designated by a legend such as "Prior Art."

Claims 1-3 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Yoshiharua* (JP 53-36004).

Claim 4 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Yoshiharu* (JP 53-36004).

Summary of the Response to the Office Action

Applicants have cancelled claim 2, without prejudice or disclaimer and amended claim 1. Accordingly, claims 1, 3 and 4 are presently pending and under consideration.

Applicants submit concurrently herewith a Submission of Replacement Drawings to include the legend "Prior Art" in Fig. 1 as suggested by the Examiner.

The Objection to the Drawings

Fig. 1 stands objected to under 37 C.F.R. § 1.121(d) as not being designated by a legend such as "Prior Art." In a Submission of Replacement Drawings filed concurrently herewith, Applicants concurrently file a Submission of Formal Drawings with five (5) sheets of formal drawings to substitute the original filed drawing sheets. The new formal drawings amend Fig. 1 to include the legend "Prior Art" as suggested by the Examiner.

The Rejection Under 35 U.S.C. § 102(b)

Claims 1-3 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by *Yoshiharu* (JP 53-36004). Applicants respectfully traverse the rejection for at least the following reasons.

Applicants respectfully submit that the Office Action has not established that *Yoshiharu* anticipates each and every feature of Applicants' claimed invention and that all rejections under 35 U.S.C. § 102(b) should be withdrawn. Independent claim 1 recites, in part, "an oil pressure source capable of outputting a predetermined hydraulic power; . . . a hydraulic pump motor having an inlet port to which the other end of the first oil path is connected; an inertial body connected to a rotary shaft of the hydraulic pump motor; . . . and a controller for controlling opening and closing of the on-off valve, wherein when the on-off valve is closed and a torque for driving the oil pressure source is smaller than a torque occurred by the pump motor, the controller is operative to exercise control for repeatedly switching the on-off valve so as to increase the discharge pressure of the pump motor and supply the oil from the pump motor toward the load," as amended. *Yoshiharu* fails to teach or suggest at least these features of claim 1.

In the present invention, as energy is accumulated in the rotating inertial body 60 connected to the pump motor 52, the high pressure oil can be supplied to the load 22 by switching control of the valve 68 in spite of the distance between the source 20 and the motor 52. See Fig. 2 and ¶ [0033] to [0037] in the specification. Thus, high pressure oil can be supplied to the load 22 even in cases where the distance between the oil pressure source 20 and the on-off

valve 68 is very long. See Fig. 1 and ¶ [0004] to [0007] in the specification.

In contrast, the fluid power system in *Yoshiharu* neither addresses nor provides the necessary components to accomplish these objectives. *Yoshiharu* does not have any controllers for exercise switching control of the on-off valve 12. Also as shown in Fig. 2 of *Yoshiharu*, the pressure oil source or pump 3 is connected to not only the pump motor 7, but also the load 15. This arrangement means that the pump 3 is used as a source for supplying oil to the load, and that the pump 7 is used as a backup oil source which can supply oil to the load when the volume of oil from the pump 3 to the load has a short fall. Therefore, we believe that the fluid power system in *Yoshiharu* does not anticipate the present invention.

As pointed out in MPEP § 2131, a claim is anticipated by a prior art reference only if each and every element as set forth in the claim is found. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051 (Fed. Cir. 1987). Therefore, Applicants respectfully assert that the rejection under 35 U.S.C. § 102(b) should be withdrawn because *Yoshiharu* does not teach or suggest each feature of newly amended independent claim 1.

Additionally, Applicants respectfully submit that dependent claims 3-4 are also allowable insofar as they recite the patentable combinations of features recited in claim 1, as well as reciting additional features that further distinguish over the applied prior art.

The Rejection Under 35 U.S.C. § 103(a)

Claim 4 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Yoshiharu*. Applicants respectfully traverse the rejection for at least the following reasons.

To establish a *prima facie* case of obviousness, three basic criteria must be met (see

MPEP §§ 2142-2143). First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art references must teach or suggest all the claim limitations.

The Office Action has not established a *prima facie* case of obviousness at least because *Yoshiharu*, whether alone or in combination, fail to teach or suggest all the recited features of independent claim 1. Independent claim 1 recites, in part, “an oil pressure source capable of outputting a predetermined hydraulic power; . . . a hydraulic pump motor having an inlet port to which the other end of the first oil path is connected; an inertial body connected to a rotary shaft of the hydraulic pump motor; . . . and a controller for controlling opening and closing of the on-off valve, wherein when the on-off valve is closed and a torque for driving the oil pressure source is smaller than a torque occurred by the pump motor, the controller is operative to exercise control for repeatedly switching the on-off valve so as to increase the discharge pressure of the pump motor and supply the oil from the pump motor toward the load,” as amended. As previously demonstrated, *Yoshiharu* does not anticipate the above-mentioned features of the present invention, and these features are not taught or suggested by another reference. Therefore, *Yoshiharu*, whether taken alone or in combination, fails to teach or suggest at least these features of claim 1.

As pointed out in M.P.E.P. § 2143.03, all the claimed limitations must be taught or suggested by the prior art to establish *prima facie* obviousness of a claimed invention. Because *Yoshiharu*, whether taken alone or in combination, fail to teach or suggest each feature of

independent claim 1, the rejection under 35 U.S.C. § 103(a) should be withdrawn. Furthermore, claim 4 depends from one of independent claim 1. Accordingly, claim 4 is also allowable because of the additional features it recites and the reasons stated above.

CONCLUSION

In view of the foregoing, Applicants respectfully request reconsideration and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of the Response, the Examiner is invited to contact the Applicants' undersigned representative to expedite prosecution.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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